BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	**)**	
	)	
Petition for Declaratory Ruling To Clarify 47	**)**	**WC Docket 11-118**
U.S.C. § 572 in the Context for Transactions	**)**	
Between Competitive Local Exchange Carriers	**)**	
And Cable Operators	**)**	

COMMENTS OF DIGITAL LIBERTY
AMERICANS FOR TAX REFORM

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Digital Liberty, a project of Americans for Tax Reform, respectfully encourages the Commission to make clear that limited cross-ownership restrictions in Section 652 of the Communication Act of 1934 do not apply to cable operators and competitive local exchange carriers (CLECs).

The goal of the Telecommunications Act of 1996 was to stimulate greater competition in the communications market. While this was largely achieved through deregulation, the law also attempted to force competition against legacy carriers by providing regulatory benefits to newly emerging local exchange carriers. In the years following passage of the Telecommunications Act, however, many of these CLECs have been plagued by bankruptcies and have not dramatically altered competition in the wireline market.

Cable operators, however, have emerged as direct competitors with incumbent local exchange carriers (ILECs), only without the regulatory advantages given to CLECs. As cable providers experience strong growth, CLECs continue to decline. Cable operators should be permitted to invest in or acquire CLECs, particularly if the Commission's goal is to continue encouraging competition in the market.

Allowing such transactions will also not impact continued competition in last mile facilities. In contrast to cable providers, a majority of CLECs do not own last mile facilities. According to the Commission, 71 percent of CLECs merely lease or resell ILEC services at wholesale and regulated rates.[1] The number of remaining CLECs that do own local loops is declining, as they cannot compete with ILECs, cable, and other VoIP providers. For many CLECs, allowing other providers to invest may be their last hope.

CLECs and cable operators have also struggled to make inroads in the market for business services. Non-ILECs provide service to half as many businesses as ILECs, despite wholesale pricing regulations enjoyed by CLECs and strong growth by cable providers in the voice market.[2] Freeing the market by more explicitly allowing cable operators to partner with CLECs may help to provide greater competition for business services.

Provisions in Section 652 related to local franchising authorities (LFAs) are also in need of review. The ability to entirely deny or ignore mergers and acquisitions between CLECs and cable companies is altogether not the proper role of LFAs. LFAs have limited expertise and no authority over wireline services, and could exploit this expanded power to extract unrelated concessions from providers. We agree with the National Cable and Telecommunications Association's petition that the Commission should act within its power to more appropriately define LFA authority and set a timeline for transaction approvals.

The petition to clarify Section 652 also provides yet another arrow in the quiver of those calling for reform of the communications regulatory regime. Specific to this petition, the convoluted nature of Section 652 and uncertainty emerging after prior transactions between CLECs and cable operators (such as CIMCO and Comcast) shows a need not just for clarity, but also for free-market reform.

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[1] Federal Communications Commission, "Local Telephone Competition: Status as of June 30, 2010," March 21, 2011, Pg. 10.
[2] Ibid, Pg. 5.

More generally, the current regulatory regime is grossly out of date. Technology and business models have advanced well beyond current law, which has hamstrung innovation with onerous regulations that are silo-structured by technology. Regulations rooted in the Telecommunications Act segregate the communications industry, while industry itself converges around the Internet to provide phone, video, and other services. These cross-ownership restrictions are part of this antiquated regulatory system.

In order to advance competition, limit regulation in the market, and ensure that the Telecommunications Act reflects the modern communications landscape, the Commission should clarify that limited cross-ownership restrictions in Section 652 do not apply to cable operators and CLECs.

Respectfully Submitted,

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